



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB2771

by Rep. Maurice A. West II

#### SYNOPSIS AS INTRODUCED:

820 ILCS 112/10  
820 ILCS 112/30

Amends the Equal Pay Act of 2003. Prohibits an employer from: (i) screening job applicants based on their wage or salary history, (ii) requiring that an applicant's prior wages satisfy minimum or maximum criteria, and (iii) requesting or requiring as a condition of being interviewed or as a condition of continuing to be considered for an offer of employment that an applicant disclose prior wages or salary. Prohibits an employer from seeking the salary, including benefits or other compensation or salary history, of a job applicant from any current or former employer. Limits defenses. Provides for penalties and injunctive relief. Effective immediately.

LRB101 07626 JLS 52673 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Equal Pay Act of 2003 is amended by changing  
5 Sections 10 and 30 as follows:

6 (820 ILCS 112/10)

7 Sec. 10. Prohibited acts.

8 (a) No employer may discriminate between employees on the  
9 basis of sex by paying wages to an employee at a rate less than  
10 the rate at which the employer pays wages to another employee  
11 of the opposite sex for the same or substantially similar work  
12 on jobs the performance of which requires substantially similar  
13 ~~equal~~ skill, effort, and responsibility, and which are  
14 performed under similar working conditions, except where the  
15 payment is made under:

16 (1) a seniority system;

17 (2) a merit system;

18 (3) a system that measures earnings by quantity or  
19 quality of production; or

20 (4) a differential based on any other factor other  
21 than: (i) sex or (ii) a factor that would constitute  
22 unlawful discrimination under the Illinois Human Rights  
23 Act, provided that the factor:-

1           (A) is not based on or derived from a differential  
2           in compensation based on sex or another protected  
3           characteristic;

4           (B) is job-related with respect to the position and  
5           consistent with a business necessity; and

6           (C) accounts for the entire differential.

7           Such defense shall not apply if the employee  
8           demonstrates that an alternative employment practice  
9           exists that would serve the same business purpose without  
10           producing such differential and that the employer has  
11           refused to adopt such alternative practice.

12           No employer may discriminate between employees by paying  
13           wages to an African-American employee at a rate less than the  
14           rate at which the employer pays wages to another employee who  
15           is not African-American for the same or substantially similar  
16           work on jobs the performance of which requires substantially  
17           similar equal skill, effort, and responsibility, and which are  
18           performed under similar working conditions, except where the  
19           payment is made under:

20           (1) a seniority system;

21           (2) a merit system;

22           (3) a system that measures earnings by quantity or  
23           quality of production; or

24           (4) a differential based on any other factor other  
25           than: (i) race or (ii) a factor that would constitute  
26           unlawful discrimination under the Illinois Human Rights

1        Act, provided that the factor:—

2                (A) is not based on or derived from a differential  
3                in compensation based on race or another protected  
4                characteristic;

5                (B) is job-related with respect to the position and  
6                consistent with a business necessity; and

7                (C) accounts for the entire differential.

8                Such defense shall not apply if the employee  
9                demonstrates that an alternative employment practice  
10               exists that would serve the same business purpose without  
11               producing such differential and that the employer has  
12               refused to adopt such alternative practice.

13               An employer who is paying wages in violation of this Act  
14               may not, to comply with this Act, reduce the wages of any other  
15               employee.

16               Nothing in this Act may be construed to require an employer  
17               to pay, to any employee at a workplace in a particular county,  
18               wages that are equal to the wages paid by that employer at a  
19               workplace in another county to employees in jobs the  
20               performance of which requires equal skill, effort, and  
21               responsibility, and which are performed under similar working  
22               conditions.

23               (b) It is unlawful for any employer to interfere with,  
24               restrain, or deny the exercise of or the attempt to exercise  
25               any right provided under this Act. It is unlawful for any  
26               employer to discharge or in any other manner discriminate

1 against any individual for inquiring about, disclosing,  
2 comparing, or otherwise discussing the employee's wages or the  
3 wages of any other employee, or aiding or encouraging any  
4 person to exercise his or her rights under this Act. It is  
5 unlawful for an employer to require an employee to sign a  
6 contract or waiver that would prohibit the employee from  
7 disclosing or discussing information about the employee's  
8 wages.

9 (b-5) It is unlawful for an employer to screen job  
10 applicants based on their wage or salary history, including by  
11 requiring that an applicant's prior wages, including benefits  
12 or other compensation, satisfy minimum or maximum criteria or  
13 requesting or requiring as a condition of being interviewed, as  
14 a condition of continuing to be considered for an offer of  
15 employment, as a condition of an offer of employment or an  
16 offer of compensation, or as a condition of employment that an  
17 applicant disclose prior wages or salary.

18 (b-10) It is unlawful for an employer to seek the wage or  
19 salary history, including benefits or other compensation, of  
20 any job applicant from any current or former employer. This  
21 subsection (b-10) does not apply if:

22 (1) the job applicant's wage or salary history is a  
23 matter of public record under the Freedom of Information  
24 Act, or any other equivalent State or federal law, or is  
25 contained in a document completed by the job applicant's  
26 current or former employer and then made available to the

1 public by the employer, or submitted or posted by the  
2 employer to comply with State or federal law; or

3 (2) the job applicant is a current employee and is  
4 applying for a position with the same current employer.

5 (c) It is unlawful for any person to discharge or in any  
6 other manner discriminate against any individual because the  
7 individual:

8 (1) has filed any charge or has instituted or caused to  
9 be instituted any proceeding under or related to this Act;

10 (2) has given, or is about to give, any information in  
11 connection with any inquiry or proceeding relating to any  
12 right provided under this Act; ~~or~~

13 (3) has testified, or is about to testify, in any  
14 inquiry or proceeding relating to any right provided under  
15 this Act; or-

16 (4) fails to comply with any wage history inquiry.

17 (Source: P.A. 100-1140, eff. 1-1-19.)

18 (820 ILCS 112/30)

19 Sec. 30. Violations; fines and penalties.

20 (a) If an employee is paid by his or her employer less than  
21 the wage to which he or she is entitled in violation of Section  
22 10 of this Act, the employee may recover in a civil action the  
23 entire amount of any underpayment together with interest,  
24 compensatory damages if the employee demonstrates that the  
25 employer acted with malice or reckless indifference, punitive

1 damages as may be appropriate, injunctive relief as may be  
2 appropriate, and the costs and reasonable attorney's fees as  
3 may be allowed by the court and as necessary to make the  
4 employee whole. At the request of the employee or on a motion  
5 of the Director, the Department may make an assignment of the  
6 wage claim in trust for the assigning employee and may bring  
7 any legal action necessary to collect the claim, and the  
8 employer shall be required to pay the costs incurred in  
9 collecting the claim. Every such action shall be brought within  
10 5 years from the date of the underpayment. For purposes of this  
11 Act, "date of the underpayment" means each time wages are  
12 underpaid.

13 (a-5) If an employer violates subsection (b), (b-5), or  
14 (b-10) of Section 10, the employee may recover in a civil  
15 action any damages incurred, special damages not to exceed  
16 \$10,000, injunctive relief as may be appropriate, and costs and  
17 reasonable attorney's fees as may be allowed by the court and  
18 as necessary to make the employee whole. If special damages are  
19 available, an employee may recover compensatory damages only to  
20 the extent such damages exceed the amount of special damages.  
21 Such action shall be brought within 5 years from the date of  
22 the violation.

23 (b) The Director is authorized to supervise the payment of  
24 the unpaid wages under subsection (a) or damages under  
25 subsection (b), (b-5), or (b-10) of Section 10 owing to any  
26 employee or employees under this Act and may bring any legal

1 action necessary to recover the amount of unpaid wages,  
2 damages, and penalties or to seek injunctive relief, and the  
3 employer shall be required to pay the costs. Any sums recovered  
4 by the Director on behalf of an employee under this Section  
5 shall be paid to the employee or employees affected.

6 (c) Employers who violate any provision of this Act or any  
7 rule adopted under the Act are subject to a civil penalty for  
8 each employee affected as follows:

9 (1) An employer with fewer than 4 employees: first  
10 offense, a fine not to exceed \$500; second offense, a fine  
11 not to exceed \$2,500; third or subsequent offense, a fine  
12 not to exceed \$5,000.

13 (2) An employer with 4 or more employees: first  
14 offense, a fine not to exceed \$2,500; second offense, a  
15 fine not to exceed \$3,000; third or subsequent offense, a  
16 fine not to exceed \$5,000.

17 An employer or person who violates subsection (b), (b-5),  
18 (b-10), or (c) of Section 10 is subject to a civil penalty not  
19 to exceed \$5,000 for each violation for each employee affected.

20 (d) In determining the amount of the penalty, the  
21 appropriateness of the penalty to the size of the business of  
22 the employer charged and the gravity of the violation shall be  
23 considered. The penalty may be recovered in a civil action  
24 brought by the Director in any circuit court.

25 (Source: P.A. 99-418, eff. 1-1-16.)

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.